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IN THE

Supreme Court of the United States

OCTOBER TERM, 1972.

No. 72-353

CERTIFIED GROCERS OF ILLINOIS, INC., ET AL.,
Petitioners,

vs.

SPARKLE FOOD CENTER, INC., ET AL.,
Respondents.

REPLY BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI.

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INDEX.

PAGE

Reasons for granting the writ

I. The Illinois Supreme Court Decided a Federal Constitutional Question 1

II. If a State Court Decision Is Ambiguous This Court May Remand for Clarification 5

Conclusion 6

AUTHORITIES CITED.

Cases.

Black v. Cutter Laboratories, 351 U. S. 202 (1956) 1

Department of Mental Hygiene of California v. Kirchner, 380 U. S. 194 (1965) 6

Durley v. Mayo, 351 U. S. 277 (1956) 3

Klinger v. Missouri, 13 Wall 257 (1872) 4

Konigsberg v. State Bar, 353 U. S. 252 (1957) 3

Minnesota v. National Tea Co., 309 U. S. 551 (1940) ... 5

Neilson v. Lagow, 12 Howard 98 (1851) 2

Shoemaker v. Randell, 10 Peters 391 (1836) 2

State Tax Commission v. Van Cott, 306 U. S. 511 (1939) 5

West Chicago St. R. Co. Rd. v. Illinois *ex rel.* Chicago, 201 U. S. 506 (1906) 3

Williams v. Kaiser, 323 U. S. 471 (1945) 4

Wood v. Chesborough, 228 U. S. 672 (1913) 3

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Respondents argue that the judgment of the Supreme Court of Illinois rests upon an independent, adequate state ground and that therefore the petition for a writ of certiorari should be denied. The Illinois Court did not state or otherwise indicate that it was deciding the due process issue on state grounds, and the record and the nature of the case demonstrate that the Court based its decision on the Federal Constitutional ground.

I. THE ILLINOIS SUPREME COURT DECIDED A FEDERAL CONSTITUTIONAL QUESTION.

This Court has said that it will determine for itself the precise ground of judgment of the state court. *Black* v. *Cutter Laboratories*, 351 U. S. 292, 298 (1956). In order

for this Court to have jurisdiction to decide a Federal Constitutional issue, it is not required that the issue be raised and decided in direct and positive terms but a sufficient jurisdictional basis exists where the question must have been raised and must have been decided to reach the result of the case. *Shoemaker* v. *Randell*, 10 Peters 391 (1836). To determine the actual basis of the state court decision, this Court will search the entire record of the proceeding, including that of the state inferior courts. *Neilson* v. *Lagow*, 12 Howard 98, 99 (1851).

Since the Supreme Court of Illinois did not explicitly state that it was deciding the case on the basis of Federal Constitutional due process, an analysis of the argument presented by counsel before the Supreme Court of Illinois is necessary. The brief filed by the Respondents in support of their due process argument before the Illinois Court demonstrates that respondents' argument was based upon the Federal Constitution (Respondents' brief is part of the record filed in this Court).

In their brief, Respondents cited only four Illinois Supreme Court cases in support of their due process argument. None of those cases supports a decision by the Illinois Court on other than Federal Constitutional grounds. The decision in *Railway Conductors' Benefit Association* v. *Robinson*, 147 Ill. 138, 159 (1893), involved a contract right and was not based on Illinois Constitutional guarantees but on the constitution of the association. In the second case, *Smith* v. *Department of Registration and Education*, 412 Ill. 332, 341 (1952), the Supreme Court of Illinois discussed and decided the Federal Constitutional issue and then noted that the state provisions were similar to the Federal. The case of *People ex rel. Pryblinski* v. *Scott*, 19 Ill. 2d 300 (1st Dist. 1960) involved the rights of an accused in a criminal case and was thus not remotely related to the

issues here. In *Ryan* v. *Cudahy*, 157 Ill. 108 (1895) and in the Illinois Appellate Court case on which Respondents placed heavy emphasis, *Virgin* v. *American College of Surgeons*, 42 Ill. App. 2d 352 (1st Dist. 1963), the Court based its decision for plaintiffs on the defendants' violation of the association's by-laws.

Respondents' argument in the Supreme Court of Illinois rested upon *In Re Murchison*, 349 U. S. 133, 136 (1955), and *Goldberg* v. *Kelly*, 397 U. S. 254, 271 (1970), which were decided on Federal Constitutional grounds. Respondents repeatedly and prominently cited these cases in their brief before the Supreme Court of Illinois and in their oral argument before the Illinois Appellate Court. After the decision in *Goldberg* was handed down, Respondents seized upon the holdings of *Goldberg* and *Murchison*, citing these two cases as their prime authority for every conceivable argument. Respondents now attempt to avoid a decision on the merits of that argument by asserting that the Illinois decision was based on independent and adequate state grounds.

Even if the decision of the Illinois Supreme Court had been squarely decided on state grounds this Court will determine if those grounds were independent and adequate to support the decision. *Wood* v. *Chesborough*, 228 U. S. 672, 676-680 (1913); *West Chicago St. R. Co. Rd.* v. *Illinois ex rel. Chicago*, 201 U. S. 506, 519-20 (1906). In *Durley* v. *Mayo*, 351 U. S. 277, 281 (1956), this Court held that its jurisdiction could be established by demonstrating that the alleged non-federal grounds could not account for the state decision. Where prior state court decisions tend to show that the alleged non-federal grounds are nonexistent, jurisdiction is established. See *Konigsberg* v. *State Bar*, 353 U. S. 252, 257 (1957).

The case now before the Court falls squarely within the

doctrine of these cases. The ruling of the Supreme Court of Illinois is inconsistent with a long line of previous Illinois cases holding that courts would intervene in the internal affairs of a private, voluntary association in the exercise of their coercive powers only to insure compliance with the association's internal law. (This was recognized by Chief Justice Underwood in his dissenting opinion. The cases cited therein vigorously support that position.) The Supreme Court of Illinois specifically found that the procedures of the disciplinary hearing in question were in compliance with those prescribed by the by-laws of Certified. In deciding that the procedures followed violated the due process rights of Respondents, the Supreme Court cited no Illinois cases in support of its position nor did it seek to distinguish the cases cited by petitioner. The decision must be interpreted to mean that the due process clause applies to a voluntary association even though compliance with the association's by-laws, rules and regulations is demonstrated. This interpretation is unprecedented in and in direct contradiction to Illinois statutory, judicial or constitutional law. Clearly the general citations of cases from other jurisdictions do not provide independent, adequate state grounds in Illinois law. Therefore, the Supreme Court of Illinois could not have based its decision on state grounds. Since an adequate state ground cannot be raised to support the state court judgment "it will be presumed that the state court based its judgment on the law raising the Federal question and, this Court will take jurisdiction." *Klinger* v. *Missouri*, 13 Wall 257, 263 (1872); *Williams* v. *Kaiser*, 323 U. S. 471 (1945).

If this Court denies review in this case, the effect will be to allow a decision of the Supreme Court of Illinois to stand which could not have been predicated upon Illinois law but rather was based on an erroneous interpretation of

the Federal Constitution, an interpretation, moreover, that will have far reaching consequences on private voluntary associations.

Respondents contend that this case is unimportant in terms of nationwide importance. But this ignores reality. Because many unincorporated associations such as the Chicago Board of Trade are located in Illinois, the Illinois courts must often decide cases involving voluntary associations. As a result, Illinois decisions are frequently cited as controlling authority by other jurisdictions, and this case, founded on an erroneous Constitutional basis, will undoubtedly affect the course of future decisions.

II. IF A STATE DECISION IS AMBIGUOUS THIS COURT MAY REMAND FOR CLARIFICATION.

In a case where the state court opinion is ambiguous so that this Court is unable to ascertain the actual holding of the state court, the case may be remanded for further consideration and clarification. *Minnesota* v. *National Tea Co.*, 309 U. S. 551 (1940); *State Tax Commission* v. *Van Cott*, 306 U. S. 511 (1939). In the case of *Department of Mental Hygiene of California* v. *Kirchner*, 380 U. S. 194 (1965) the case was remanded for clarification on the grounds that in reaching its decision the California Supreme Court had failed to specify whether its decision was based on the equal protection clause of the Fourteenth Amendment on a similar provision in the California constitution or both.

As an alternative to finding the Supreme Court of Illinois did in fact decide the Federal Constitutional issue, the case should be remanded to the Supreme Court of Illinois for clarification.

CONCLUSION.

For these reasons, a writ of certiorari should issue to review the judgment and opinion of the Illinois Supreme Court.

Respectfully submitted,

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